

Nos. 191 and 192.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS,

NINTH CIRCUIT.

OCCIDENTAL & ORIENTAL STEAMSHIP
COMPANY, a Corporation, *Appellant,* }
vs. } No. 191.
HENRY F. SMITH et al., *Appellees.* }

OCCIDENTAL & ORIENTAL STEAMSHIP
COMPANY, a Corporation, *Appellant,* }
vs. } No. 192.
ELIZA A. SMITH, *Appellee.* }

PETITION FOR REHEARING.

FILED

MAR 7 - 1896

W. H. L. BARNES,
*Proctor for Appellant,
Crocker Building.*

IN THE
United States Circuit Court of Appeals
FOR THE
NINTH CIRCUIT.

OCCIDENTAL & ORIENTAL STEAM-
SHIP COMPANY,

Appellant,

VS.

HENRY F. SMITH ET AL.,

Appellees.

OCCIDENTAL & ORIENTAL STEAM-
SHIP COMPANY,

Appellant,

VS.

ELIZA A. SMITH,

Appellee.

I respectfully ask for a rehearing in these cases upon the following grounds :

In concluding its opinion affirming the decrees of the District Court in these cases the court of appeals

says: " This case affords an opportunity which should
 " not be lost, for emphasizing another important rule for
 " preventing collisions, which must be observed by
 " navigators; this is found in Art. 21 of the Inter-
 " national Rules above referred to, and Art. 25 of the
 " Act of August 19, 1890 (1 Supp. R. S. Sec. Ed., 781-
 " 788), which reads as follows: ' In narrow channels
 " ' every steam vessel shall, when it is safe and prac-
 " ' ticable, keep to that side of the fair-way or mid-
 " ' channel which lies on the starboard side of such
 " ' vessel.' ' The Statutes of California contain a
 " ' similiar provision to which reference was made in
 " ' the opinion of the District Judge. This rule was vio-
 " ' lated by the "Oceanic" in entering the Golden Gate
 " ' on the occasion of the disaster involved in those
 " ' suits, AND THE ONLY EXCUSE offered for taking the
 " ' north side, is that it is customary for large vessels
 " ' in entering to take the north side. We cannot find
 " ' in the testimony or argument of counsel any attempt
 " ' to give a reason for the alleged custom, and, if it be
 " ' true that there is such a custom, it is bad in principle
 " ' and contrary to law, and the courts will not recog-
 " ' nize it as affording any ground for exempting a
 " ' vessel from liabilities incurred by disregarding the
 " ' law. ("The Victory," 68 Fed. Rep., 395; "The
 " ' Britannia," 153 U. S., 130).'

If the Court will refer to the transcript of record at page 100, it will find the following extracted from the testimony of Capt. John Metcalfe, master of the "Oceanic":

“ Q. You say, as I understand, the same as Capt. Meyer does, that you were about a quarter of a mile off from Point Diablo?

“ A. As near as I could estimate—a quarter of a mile.

“ Q. As you remember, your direction was about north northeast?

“ A. No, sir; about northeast half east.

“ Q. Northeast half east?

“ A. Yes, sir. Up to this first cross [pointing] it had been northeast by east. In order to carry out my wishes, the pilot put her half a point more to the northward, *in order to hug the north shore, which is the only safe shore to enter the harbor of San Francisco in foggy weather.*

“ Q. How far were you from the north shore when the collision occurred?

“ A. About a quarter of a mile.

“ Q. At the time, or before the collision, did you see Fort Point at all?

“ A. I told the pilot I was watching to see if I could see Fort Point, but we were so far off Fort Point that I could not see it. *I never heard any fog signal on Fort Point.* I was watching for that. I told him I thought I could see the loom of the Fort; I was not certain, but I could see Lime Point—the white fog signal landing on it plainly.

“ *The Court*—Q. You say you could not hear the fog signal at Fort Point?

“ A. *No, sir; you can never hear it unless you are right on top of it, or to leeward of it.*

“ *The Court—Q.* What is the good of it ?

“ *A. None. When you are inside, you can occasionally hear it, because you are to leeward of it, and the sound is carried to you.*”

Again on page 92 : “ We then proceeded on slowly, steering for the north head, which is Point Bonita, and I told the pilot I wished him to keep to the north shore, simply because that is the safest shore where the Government had placed all the fog signals on that shore, being free from danger, as a guide to the navigation of the port ; the pilot said he would do so. We passed Bonita Point about half a mile off.”

Capt. Wallace of the “ City of Chester ” describes his course up to the time of going into the fog as hugging the south shore (see transcript of record, page 176).

“ It was clear weather until we got down to Presidio shoal buoy, and it was still clear in shore to the southward of us, but thick outside of us ; but we were running on the edge of the fog, and we started the fog whistle blowing, that is, we blowed once a minute, and we run into the fog before we got down about halfway between the Presidio shoal buoy and the Fort we ran into the fog.

“ *By the Court—Q.* Was the Presidio shoal buoy to your right or left ?

“ *A.* About 150 feet to the right.

“ *By Mr. White—Q.* Then you were inside of it ?

“ *A.* Yes, sir.

“ *Q.* Inside the shoal ?

“ A. Yes, sir. *We steered the usual course going down to clear the Fort, and down a little ways, off Presidio, down a little ways, we ran into the fog quite thick.*”

Applying to such evidence the rule that “in narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fair-way or mid-channel which lies on the starboard side of such vessel,” would require the “Oceanic” to come into port hugging Fort Point and keeping up the bay on the south side. The same rule would have required the “City of Chester,” instead of going between the Presidio shoal buoy and the south shore and hugging Fort Point as she endeavored to do, to cross the bay in the direction of Lime Point and keep out on the northerly side of the Golden Gate hugging Point Diablo and Point Bonita. But neither vessel took such a course as would be required by the rule. The reason given for the departure from it by both, and each independent of the other, was *not*, as stated by the Court, the bald excuse of a custom, but it was because the mariner well knew that in coming from sea in heavy weather, where the view of objects on shore would be impossible, or more or less indistinct, he could get no aid from the signal fog bell at Fort Point until he was, to use Capt. Metcalfe’s expressive language, “right on top of it or to leeward of it,” and the shore on that side was shallow and rocky with numerous danger signals in the way of spar and other buoys, while approaching Point Bonita and the north shore there was a steam whistle or siren which could be heard for some distance at sea, and

another siren at Lime Point and deep water all the way. The same reason made the captain of the "City of Chester" attempt to go out by way of the south shore, because being inside and to the leeward of Fort Point he could hear its fog bell and guide his steamship by it. Therefore, compliance with the rule referred to, which, under ordinary circumstances, required the vessel to keep to that side of the fair-way or mid-channel, which lies on the starboard side of such vessel, was unsafe and impracticable; while to go to the other side was safe and practicable.

I think the Court might find in such testimony as I have quoted above, taken from the transcript of record in these cases, not merely an attempt to give a reason, but a reason which in itself is good and substantial. If, then, this seems, upon a re-examination of the record, to be the case, and the testimony there exists as I have quoted it and it is uncontradicted by any witness, it ought to be sufficient for a finding that under the circumstances the "Oceanic" was not at fault in taking the north side of the bay upon entering this port, and is not, for that cause alone, to be held liable.

I respectfully ask is it just to a litigant before this Court that its decision should find and declare that no attempt to give a reason for the alleged custom was made by the record or by counsel, when, in point of fact, it really appeared that a reason was given, and a full explanation furnished of the course pursued by both vessels, and which reason had led to a universal custom or practice of vessels entering and going out of this port in foggy weather. I claim that the appellant

is entitled to have this testimony considered, and that it is sufficient, when considered, to relieve the "Oceanic" from the charge of negligence and inexcusable violation of law so far as her course was concerned.

Again the Court say: "If the Court should find
 " as a fact that the course of the 'Oceanic,' in enter-
 " ing and her position at the time of coming in sight
 " of the 'City of Chester,' were as claimed by the
 " appellant, such finding would not exculpate the
 " 'Oceanic,' *unless the position of the 'Chester' was*
 " *south of mid-channel*; for, if, at the time of giving
 " passing signals, both vessels were near mid-channel,
 " or if the positions and courses of the two vessels made
 " it necessary for them to pass each other in the nar-
 " rows, and on the same side of mid-channel, the law of
 " the road required each to turn to the right, so as to
 " pass each other port to port. And the 'Oceanic,' in
 " taking the initiative by signaling to pass on the star-
 " board hand, assumed the risk of all consequences. If
 " both vessels were north of mid-channel, in that com-
 " paratively narrow passage-way, they must have
 " appeared to each other at a distance of half a mile, to
 " have been approaching each other end on, or nearly
 " so. Each vessel was therefore required, by Art. 15
 " of the Revised International Rules and Regulations
 " for Preventing Collisions at Sea, adopted by Act of
 " Congress of March 3, 1885 (23 U. S. Stat., 438-441),
 " to alter her course to starboard so as to pass on the
 " port side of the other. If, however, they were not
 " meeting end on or nearly so, then necessarily the
 " two vessels were on crossing courses and the

“ ‘Oceanic’ had the ‘Chester’ on her starboard side,
 “ and it was made her duty by Art. 16 to keep out of
 “ the way of the other vessel, and failure to do so, in
 “ view of the claim made on her behalf that she was
 “ officered, manned and equipped in the most perfect
 “ and complete manner, and under perfect command,
 “ was inexcusable.”

I submit that the testimony of the officers of the
 “Chester” shows, so far as the “City of Chester” was
 concerned, that she was as far to the south of mid-channel
 at the time she was perceived from the “Oceanic”
 as she could get. Between Lime Point and ^{Fort} Point
~~Bonita~~ the Golden Gate is seven-eighths ($\frac{7}{8}$) of a mile
 wide, therefore mid-channel may be said to be half a
 mile from either shore. The officers of the “Oceanic”
 swear she was a quarter of a mile from Lime Point,
 which placed her a quarter of a mile north of mid-channel.
 The “City of Chester” when first seen was half a
 mile distant, so she, therefore, was at least a quarter of
 a mile to the south of mid-channel. Under such conditions
 it was not only lawful, as I will later show, but good
 seamanship for the “Oceanic” to keep to the north
 and for the “City of Chester” to pursue her way to sea,
 in the position in which she was, south of mid-channel.
 At the time of giving the first signal neither vessel was
 in mid-channel or near it, and the law of the road did
 not require both vessels to pass each other port to port
 except it was safe and practicable to do so. Can it be
 said that it was the duty of the “Oceanic” to run into
 mid-channel and head toward the “City of Chester” for
 the purpose of passing port to port? Clearly the wise

course was that pursued by the "Oceanic." She was where, under all the evidence, it was safe for her to be; she was proceeding with the utmost caution, and her signal to pass starboard to starboard was one which was proper, under the conditions in which these vessels were. It was not a case of steamers approaching each other "head and head" or "end on," or nearly so, a condition which makes it the duty of each steamer to pass to the right of the other, under conditions in which the pilot of either steamer may be the first in determining to pursue this course, and may give as a signal of his intention one short and distinct blast of his steam whistle which the pilot of the other steamer shall answer promptly by a similar blast of his whistle, and thereupon the steamers shall pass to the port, or right side, of each other. It was a condition where the course of the steamers was so far to the starboard of each other as not to be considered by pilots as meeting "head and head," or nearly so.

The stem of the "Oceanic" was not pointing at any time toward the stem of the "City of Chester," but away from her. The "City of Chester" was, however, pointing toward amidships of the "Oceanic," and the pilot of the "Oceanic" had under such conditions the right to give two short and distinct blasts of his steam whistle, which the pilot of the other steamer answered promptly by two similar blasts of his steam whistle, and they would have passed to the left, or on the starboard side, of each other if the "City of Chester" had minded her helm. It was precisely such a case as is provided for in the Official Rules and Regula-

tions for the Government of Pilots, adopted under the laws of the United States by the Board of Supervising Inspectors June 18, 1871, and approved by the Secretary of the Treasury, and which have been in force ever since.

For the purpose of making my view clear, I have placed below diagrams taken from the Rules and Regulations for the Government of Pilots just referred to. Rule 1 is as follows :

“ RULE 1. When steamers are approaching each other ‘head and head,’ or nearly so, it shall be the duty of each steamer to pass to the right, or port side, of the other; and the pilot of either steamer may be first in determining to pursue this course, and thereupon shall give, as a signal of his intention, one short and distinct blast of his steam whistle, which the pilot of the other steamer shall answer promptly by a similar blast of his steam whistle, and thereupon such steamers shall pass to the right, or port side, of each other. *But if the course of such steamers is so far on the starboard of each other as not to be considered by pilots as meeting, ‘head and head,’ or nearly so, the pilot so first deciding shall immediately give two short and distinct blasts of his steam whistle, which the pilot of the other steamer shall answer promptly by two similar blasts of his steam whistle, and they shall pass to the left, or on the starboard side, of each other.*

“ NOTE.—In the night, steamers will be considered meeting ‘head and head’ so long as both the colored lights of each are in view of the other.”

The diagrams furnished by the Supervising Inspector-General and President of the Board Supervising Inspectors of the United States, approved February 28, 1882, by Chas. J. Folger, Secretary of the Treasury of the United States, perfectly illustrate my position and make the rule plain.

Every ocean-going steamer is required, when under way, to carry, “ (A) At the foremast head, a bright
“ white light of such a character as to be visible on a
“ dark night, with a clear atmosphere, at a distance of
“ at least five miles, and so constructed as to show a
“ uniform and unbroken light over an arc of the
“ horizon of twenty points of the compass, and so fixed
“ as to throw the light ten points on each side of the
“ vessel, namely, from right ahead to two points abaft
“ the beam on either side.

“ (B) On the starboard side, a green light, of such
“ a character as to be visible on a dark night, with a
“ clear atmosphere, at a distance of at least two miles,
“ and so constructed as to show a uniform and un-
“ broken light over an arc of the horizon of ten points
“ of the compass, and so fixed as to throw the light
“ from right ahead to two points abaft the beam on the
“ starboard side.

“ (C) On the port side, a red light, of such a char-
“ acter as to be visible on a dark night, with a clear at-
“ mosphere, at a distance of at least two miles, and so
“ constructed as to show a uniform and unbroken light
“ over an arc of the horizon of ten points of the com-
“ pass, and so fixed as to throw the light from right
“ ahead to two points abaft the beam on the port side.

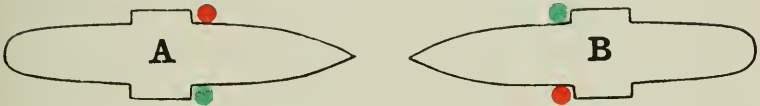
“ The green and red lights shall be fitted with in-board screens, projecting at least three feet forward from the lights, so as to prevent them from being seen across the bow.”

The diagram which illustrates Rule 1, cited above, shows the first situation contemplated by the rule where two vessels are approaching head and head, or end on, or nearly so, toward each other. It will be noticed that in the diagrams the situation is such that the red light on the port side and the green light on the starboard side, as well as the white light, can be seen by both vessels (not by one) at the same time. In such a situation, it is a standing rule that both shall put their helms to port, each having previously given the one blast of the steam whistle.

The second situation is identical, nearly, with that of the vessels involved in these cases. The “City of Chester” was off the starboard bow of the “Oceanic” between two and three points, half a mile away, and while it might have been possible for one standing on the bridge or in the center of the “Oceanic” to see all the lights of the “City of Chester,” it was a position in which the “City of Chester” could not have seen all the lights of the “Oceanic.” She could have seen the green light on the starboard side of the “Oceanic,” but not the red light on the port side. This, then, is the second situation contemplated by Rule 1. The green light, only, in such a case would have been visible to each from the stem or lookout of each, and the screen would have prevented the red light from being seen. They were, therefore, passing to star-

board, which under the regulations is ruleable in this situation; each pilot having previously signified his intention by two blasts of the steam whistle.

FIRST SITUATION.



Here the two colored lights visible to each will indicate their direct approach "head and head" toward each other. In this situation it is a standing rule that both shall put their helms to port and pass to the right, each having previously given one blast of the steam-whistle.

SECOND SITUATION.



Here the green light only will be visible to each, the screens preventing the red light from being seen. They are, therefore, passing to starboard, which is ruleable in this situation, each pilot having previously signified his intention by two blasts of the steam-whistle.

The steamers were not on the same side of mid-channel *when the first signals were given* to go to the left. It was the "City of Chester" which came over to the north side of the channel and not the "Oceanic," which went to the south; therefore the "Oceanic" assumed no risk of consequences. It was proper navigation, considering the position in which the ships were at the time when the "Oceanic" first

perceived the "City of Chester,"—the latter headed toward her and two points and a half or three points off her starboard bow. It was certainly not a case of "end on, or nearly so." If it can be called a case of crossing courses because the "Chester" was headed in such a way as to strike the "Oceanic" amidships, then the "Oceanic" was certainly right in keeping away from the "City of Chester" by sending her wheel still further to starboard and going as far to the shore on the left as her master and pilot deemed safe and practicable. I claim that there was no law of navigation which was violated by the "Oceanic." The Court, however, says that if the ships were in the position in which I claim they were, it was the duty of the "Oceanic" to keep clear of the "Chester," and her failure to do so in view of the claim made on her behalf, that she was officered, manned and equipped in the most perfect and complete manner and under perfect command, was inexcusable. How can this be justly said? That an honest effort of the "Oceanic" to keep clear of the "City of Chester" was made, is amply apparent. When the "Chester" was first perceived, the "Oceanic's" helm was put to starboard, which carried her still further to the north and left, and she was then within a quarter of a mile of Lime Point, while the "City of Chester" was half a mile away, and the testimony is undisputed that, at the time the first two blasts were given and answered by the two blasts from the "City of Chester," there was not the slightest danger of collision between the two steamers if the "City of Chester" had minded her helm

and done as her captain agreed she would do. Nor was there, according to the testimony, the slightest danger of collision at the time of the second interchange of signals if the "City of Chester" had done as she had agreed to do. The trouble was she did not. There was at no time sent from the "City of Chester" a danger signal or any intimation that, from any cause, she was unable to do what she had agreed to do, and I submit that under all the authorities cited on both sides of this case, that when those signals were exchanged the captain of each vessel had the right to rely upon the other doing what was agreed should be done, and it abundantly appears from the testimony that the "Oceanic," when danger was apparent, did all that good seamanship could do with a good ship to avoid disaster.

The Court say: "The position in which the witnesses for the appellant place the 'Oceanic' hugging the north shore proves too much, for the collision could not have occurred without fault on the part of her officers, unless the 'City of Chester,' from a position southward a sufficient distance to justify passing under a starboard helm, changed her course and crossed the channel, she could not have swung sideways against the bow of the 'Oceanic,' as counsel for appellant would have us believe."

I submit that this is exactly what the evidence shows the "City of Chester" did. One of the passengers on the "City of Chester," Mr. Clitus Barbour, a well-known and intelligent lawyer of San Francisco, said in his testimony, transcript of record, page 233: "They were not cross-ways exactly * * * not a quar-

“ter angle exactly, but nearly. It appeared to me as if our boat was trying to run round the end of them and missed it, and struck.”

This inartificial story of a landsman precisely corresponds with the testimony given by the officers of the “Oceanic.” They say the “City of Chester” was coming at full speed or nearly so; that she acted as if she was on her port helm; that she slewed around across the bow of the “Oceanic,” collided with her, and in from four to six minutes thereafter filled and sank to the bottom of the bay.

The position in which the wreck was found on the same day of the disaster by Capt. Whitelaw, referred to in his testimony and depicted on the map, contained in the opinion, reduced from the large map used on the argument of the cause, demonstrates that the collision occurred just where the officers of the “Oceanic” claimed it did occur,—within a quarter of a mile from Lime Point. Two years after the accident, Capt. Whitelaw relocated the “City of Chester,” and she was then in the same place in which he had found her on the day of the accident, and Mr. Westdahl of the Coast Survey admitted that if the “City of Chester” lay where Capt. Whitelaw said she did the collision must have occurred where the officers of the “Oceanic” claimed it did.

This important factor in these cases appears to have received no notice at the hands of the Circuit Court of Appeals, and I respectfully submit that the cases cannot justly be disposed of without that testimony being fully considered. The state of affairs on board the “City of Chester” as shown by the witnesses ought to

throw some light upon what the officers of the "Oceanic" claimed to have been the course, speed and conduct of the "City of Chester."

According to the testimony of her own people, she left Broadway wharf in the neighborhood of nine o'clock; steamed down, *hugging the southerly side of the bay* until near the Presidio when she passed into a dense fog. She was a steamer of twelve hundred (1,200) tons register, with one hundred and twenty (120) tons of miscellaneous freight and a number of passengers on board. Her chief engineer was David Franklin Cookson. He testified that the ship left Broadway wharf somewhere about nine o'clock; that the ship was put on her course *and the engines run full speed ahead*, and he then left the engine-room to go to his own room to get coffee. He got it. He then went into the engine-room down on the working platform. After he had been there a short time, he received a bell *to go full speed astern*. During his absence from the engine-room, he left in charge one Rufus Comstock, his second assistant engineer (transcript of record, page 188). This man says the "City of Chester" left Broadway wharf about five minutes after nine and ran full speed until about fifteen minutes to ten, *then slowed to half speed, and a minute and a half later the bell was rung for full speed astern*. The captain of the "City of Chester" was alone on her bridge. The first mate was below stowing cargo! The second mate was also below until the vessels were fifty feet apart! It was clear upon the trial of the case, and it is perfectly evident upon an examination of the transcript of record, that

the "Chester" was without any attention on the part of any person concerned in her management, except the captain, who was alone on her bridge. Is it any wonder, then, that such a steamer, so lightly loaded, running at full, or even half, speed, through a fog, could get out of her course and run across the bay instead of proceeding out to sea as she should have done?

The Circuit Court of Appeals finds the story of such conduct hard to believe, and says it is "contrary to the evidence and wholly unreasonable." It finds that "there is no probability that the 'Chester' threw herself across the bow of the 'Oceanic,' unless she was deflected from her course by the tide rip, and, according to the testimony, the current would not have sufficient force to have caused the misadventure so far north of mid-channel." But I respectfully submit that *this is just what the testimony does prove*, and that there is in it no such inherent improbability as to deny to it all credibility, as has been done by the Circuit Court of Appeals in these cases.

The Circuit Court of Appeals says that appellant's theory of the collision is contrary to the evidence and wholly unreasonable. I respectfully submit that our theory is sustained by the evidence; and while it would seem unreasonable that any man in his senses would navigate the "City of Chester" as she was navigated, yet when we consider that she left her dock and ran down on the south side of the bay to the Presidio at full speed, and plunged into a thick fog and ran at half speed until about the moment of collision,

and all the while this was going on her chief engineer was drinking coffee below, the first mate was stowing cargo below, the second mate was also below until about the moment of the accident, what wonder can there be that Capt. Wallace lost his way and headed across stream? Yet, none of these circumstances, which all have a bearing upon the probability or improbability or the reasonableness or unreasonableness of appellant's theory of the accident, do not appear to have attracted the attention of the Court.

I respectfully submit that there is no reason why the statements made by the master, the pilot and the officers of the "Oceanic" should not be received with full credit instead of being discredited by the Court, without any evidence to the contrary of what these persons state.

It is an established rule that the testimony of officers and witnesses as to what was actually done on board their own vessel is entitled to greater weight than that of witnesses on other boats who judge or form opinions merely from observation.

"The Folsom," 52 Fed. Rep., 411.

"The Hope," 4 Fed. Rep., 89.

"The Wiman," 20 Fed. Rep., 248.

"The Alberta," 23 Fed. Rep., 807.

This sound and established rule of evidence was totally ignored by the District Court in its opinion, who found in effect, without any evidence to sustain it, that the master, pilot and officers of the "Oceanic" either did not know what they were saying or were

guilty of absolute perjury in swearing as to the course and speed and conduct of the "Oceanic," and proceeded, by a sort of inductive reasoning to give to both the "Oceanic" and the "City of Chester" a course and speed and conduct totally differing from the testimony on both sides of the case, and found upon its own reasoning, and not upon the facts as developed by the evidence, that the "Oceanic" came up in mid-channel instead of hugging the north shore as all those on board of her agreed in swearing that she did.

The captain of the "Chester" and the witnesses produced by him, and who testified concerning the "Chester," placed her in a totally different position from that found by the District Judge, and from that found by the Circuit Court of Appeals. Nowhere is there any evidence to be found, or any reasonable deduction therefrom, which places the "Oceanic" and the "City of Chester" in a position of vessels "head and head, or end on, or nearly so," and it seems to me that in the undoubted position of the vessels when the "Chester" was first perceived by the "Oceanic," the right of the "Oceanic" to pass to the left and the duty of the "City of Chester" to also go to the left was beyond question, under the rule for the government of such vessels above cited.

But, under any circumstances, there is nothing in the case to warrant the Court in reaching the conclusion that six or eight intelligent and unimpeached witnesses, in a position to know the facts, have testified falsely in stating the course, position and speed of the "Oceanic."

These cases were submitted after full oral argument in October, 1894. They were decided in February, 1896, and it might be that this delay had removed from the minds of the learned judges, who heard the argument, some of the facts then presented, to which reference is made above, and which it seems to me are essential to its full consideration.

The questions involved are of the deepest importance to the navigation of large and deep-draught steamers and vessels, and which go far beyond the mere amount of money involved. Nothing can be lost by a rehearing, and I respectfully urge the Court to award it.

W. H. L. BARNES,
Attorney for Appellant.

I hereby certify in accordance with Rule 29 of the Circuit Court of Appeals for the Ninth Circuit, that in my judgment the foregoing petition for a rehearing in the above-entitled cases is well founded, and that said petition for rehearing is not interposed for delay.

W. H. L. BARNES,
Attorney for Appellant.

